

DOCKETED
APR 12 2005
FULBRIGHT & JAWORSKI
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PO20W0 RECEIVED
MAR 21 2005
MSM
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
LOS ANGELES

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
MICHAEL J. MALLIE
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 WILSHIRE BOULEVARD
7TH FLOOR
LOS ANGELES, CA 90025

PCT

NOTIFICATION OF TRANSMITTAL OF
INTERNATIONAL PRELIMINARY
EXAMINATION REPORT T & Z

NO DOCKETING REQUIRED
N.A.

(PCT Rule 71.1)

MAR 24 2005

Date of Mailing
(day/month/year)

17 MAR 2005

LA FIF DEPT.

Applicant's or agent's file reference

5158 P008PCT 07147 P008

IMPORTANT NOTIFICATION

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US02/36030

07 November 2002 (07.11.2002)

02 July 2001 (02.07.2001)

Applicant

BROADSTORM TELECOMMUNICATION, INC.

ADAPTIVE, INC.

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices)(Article 39(1))(see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

Name and mailing address of the IPEA/US

Mail Stop PCT, Attn: IPEA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Form PCT/IPEA/416 (July 1992)

Authorized officer

David Nguyen

Telephone No. 703-605-4254

RECEIVED
APR 11 2005
FULBRIGHT & JAWORSKI
BY TAB

PATENT COOPERATION TREATY

PCT

REC'D 21 MAR 2005

WIPO

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 5158.P008PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US02/36030	International filing date (day/month/year) 07 November 2002 (07.11.2002)	Priority date (day/month/year) 02 July 2001 (02.07.2001)
International Patent Classification (IPC) or national classification and IPC IPC(7): H04Q 7/20 7/00 H04B 1/00 1/10 and US Cl.: 340/7.21 455/450		
Applicant BROADSTORM TELECOMMUNICATION, INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

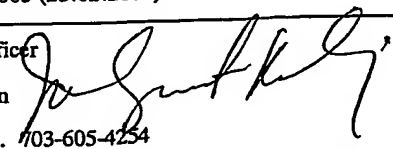
2. This REPORT consists of a total of 62 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of _____ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 19 May 2004 (19.05.2004)	Date of completion of this report 25 February 2005 (25.02.2005)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer David Nguyen  Telephone No. 703-605-4254

Form PCT/IPEA/409 (cover sheet)(July 1998)

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US02/36030

I. Basis of the report

1. With regard to the elements of the international application:*

☒ the international application as originally filed.☒ the description:

pages 1-25 as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____

☒ the claims:

pages 26-31, as originally filed

pages NONE, as amended (together with any statement) under Article 19

pages NONE, filed with the demand

pages NONE, filed with the letter of _____

☒ the drawings:

pages 1-14, as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____

☐ the sequence listing part of the description:

pages NONE, as originally filed

pages NONE, filed with the demand

pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).☐ the language of publication of the international application (under Rule 48.3(b)).☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

☐ contained in the international application in printed form.☐ filed together with the international application in computer readable form.☐ furnished subsequently to this Authority in written form.☐ furnished subsequently to this Authority in computer readable form.☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.4. ☒ The amendments have resulted in the cancellation of:☒ the description, pages None☒ the claims, Nos. None☒ the drawings, sheets/fig None5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application
PCT/US02/36030

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)

Claims 1-29 YES

Claims NONE NO

Inventive Step (IS)

Claims None YES

Claims 1-29 NO

Industrial Applicability (IA)

Claims 1-29 YES

Claims NONE NO

2. CITATIONS AND EXPLANATIONS

Please See Continuation Sheet

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US02/36030**Supplemental Box**

(To be used when the space in any of the preceding boxes is not sufficient)

Claims 1,6,11,17 and 22-29 lack an inventive step under PCT Article 33(3) as being obvious over MITSURU et al. (JP 06-029922) in view of Harel et al (US Patent Number 6366195).

Regarding claim 1, Mitsuru et al disclose a process for allocating carriers in a multicarrier system, the process comprising: determining a location of a subscriber with respect to a base station; selecting carriers from a band of multi-carriers to allocate to the subscriber according to the location of the subscriber with respect to the base station; allocating selected carriers to the subscriber (see abstract). Mitsuru are silent to disclose indicating to the subscriber whether or not to adjust transmit power to above its normal transmit power range. However, Harel et al discloses indicating to the subscriber whether or not to adjust transmit power to above its normal transmit power range (see col. 2, lines 23-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Harel et al to Mitsuru in order to improve signal quality.

Regarding claim 6, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel et al comprising all of the limitations as claimed. Harel et al also discloses sending a command to the subscriber to use either a normal or extended power control range based on carrier allocation (see col. 2, lines 23-27).

Regarding claim 11, Mitsuru et al disclose an apparatus comprising a carrier allocator to determine spectral priority based on information gathered from access requests sent by subscriber units (see abstract). Mitsuru et al do not disclose a power control unit coupled to the carrier allocator to indicate a power control range for each of the subscriber units. However, Harel et al discloses a power control unit coupled to the carrier allocator to indicate a power control range for each of the subscriber units (see col. 2, lines 23-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Harel to Mitsuru in order to improve signal quality.

Regarding claim 17, Harel et al also discloses wherein the power control units commands at least one of the subscriber units to extend the power control range of the subscriber (see col. 2, lines 23-27).

Regarding claim 22, Mitsuru et al disclose a method for communicating between a base station and subscribers comprising selectively allocating one or more carriers of a band to a subscribers in a multi-carrier system based on results of comparing the adjacent channel, wherein one or more subscribers closer to a base station are allocated carriers closer to the band edges of the operating channel and one or more subscribers further from the base station are allocated carriers near or at the center of the operating channel (see abstract). Mitsuru et al are silent to disclose comparing interference to adjacent channel leakage power with output power of a subscriber. However, Harel et al discloses comparing interference to adjacent channel leakage power with output power of a subscriber (see col. 2, lines 23-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Harel et al to Mitsuru in order to improve signal quality.

Regarding claims 23-29, the method of MITSURU et al in view of Harel et al also disclose wherein the adjacent channel leakage power the FCC Adjacent Channel Leakage Power (ACPR); the carrier being allocated comprise orthogonal frequency-division multiple access carriers; each carrier being allocated comprise a cluster of orthogonal frequency-division multiple access carriers; at least one of the one or more carriers comprises a spreading code and the multi-carrier system comprises a code-division multiple-access system; at least one or more carriers comprises an antenna mean in a space-division multiple access system; wherein the

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US02/36030

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

multicarrier system comprises a wireless system; the multicarrier system comprises a cable system (see col. 2, lines 1-67 of Harel).

Claims 2,3,12, 14-16 and 18-21 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Dent (US Patent Number 6061568).

Regarding claims 2 and 3, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel comprising all of the limitations as claimed. They are silent to disclose wherein the closer the subscriber is to the base station the farther away the selected carriers are from the center of the band; and wherein selecting carriers from the band of multi-carriers comprising selecting carriers closer to or at the center of the band when the subscriber is far away from the base station; and selecting carriers farther away from the center of the band when the subscriber is close to the base station. However, Dent discloses communication signals are allocated such that high power signals are positioned near the center of a given frequency band, while low power signals are positioned near frequency band edges (see col. 3, lines 1-5). It is apparent that wherein the closer the subscriber is to the base station the farther away the selected carriers are from the center of the band; and when the subscriber is far away from the base station, the mobile needs to be allocated high power signals; when the subscriber is close to the base station, the mobile only needs to be allocated low power signals. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Dent to Harel et al and Mitsuru in order to improve signal quality.

Regarding claim 12, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel comprising all of the limitations as claimed. They are silent to disclose wherein the carrier allocator allocates carriers at edges of a band to the nearest subscribers. However, Dent discloses communication signals are allocated such that high power signals are positioned near the center of a given frequency band, while low power signals are positioned near frequency band edges (see col. 3, lines 1-5). It is apparent that wherein the closer the subscriber is to the base station the farther away the selected carriers are from the center of the band; and when the subscriber is far away from the base station, the mobile needs to be allocated high power signals; when the subscriber is close to the base station, the mobile only needs to be allocated low power signals. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Dent to Harel et al and Mitsuru in order to improve signal quality.

Regarding claim 14, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel comprising all of the limitations as claimed. They are silent to disclose wherein the carrier allocator monitors allocation of the carriers and dynamically reallocates carriers to subscribers. However, Dent discloses wherein the carrier allocator monitors allocation of the carriers and dynamically reallocates carriers to subscribers (see col. 3, lines 1-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Dent to Harel et al and Mitsuru in order to improve signal quality.

Regarding claim 15, Dent also discloses communication signals are allocated such that high power signals are positioned near the center of a given frequency band, while low power signals are positioned near frequency band edges (see col. 3, lines 1-5). It is apparent that wherein the closer the subscriber is to the base station the farther away the selected carriers are from the center of the band; and when the subscriber is far away from the base station, the mobile needs to be allocated high power signals; when the subscriber is close to the base station, the mobile only needs to be allocated low power signals.

Regarding claim 16, Dent also discloses communication signals are allocated such that high power signals are positioned near the center of a given frequency band, while low power signals are positioned near frequency band edges (see col. 3, lines 1-5). It is apparent that Dent discloses wherein the carrier allocator reallocates carriers farther from the center of the band when a subscriber moves closer to the base station.

Regarding claims 18-21, Mitsuru et al disclose a method comprising a subscriber sending an indication to transmit; and the subscriber receiving an indication of carriers selected based on distance of the subscriber from the base station in relation to other subscribers, the carriers for use in communicating with a base station (see abstract). Mitsuru are silent to disclose driving up or down subscriber transmit power depending on a location of the subscriber in relation to a base station. However, Dent discloses communication signals are allocated such that high power signals are positioned near the center of a given frequency band, while low power signals are positioned near frequency band edges (see col. 3, lines 1-5). It is apparent that Dent discloses driving up or down subscriber transmit power depending on a location of the subscriber in relation to a base station; receiving a power control command from base station and wherein the subscriber drives up or down the subscriber transmit power based on; receiving a command to use either a normal or extended power control range based on the carriers allocated; and transmitting at a higher power while simultaneously meeting FCC ACPR emission requirements. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Dent to Harel et al and Mitsuru in order to improve signal quality.

Claims 4-5 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Lindroth et al. (US Patent Number 5887245) and still in view of Kotzin et al (US Patent Number 5734967).

Regarding claim 4, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel comprising all of the limitations as claimed. They are silent to disclose receiving a request from a subscriber; calculating a time delay and a path loss associated with the subscriber; and determining transmit-power requirements for the subscriber based on the time delay and the path loss. However, receiving a request from a subscriber is well known in the art. And Kotzin et al disclose relationship

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/US02/36030

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

between transmit power, path loss and time delay (see col. 5, lines 54-67); and Lindroth et al discloses determining transmit power based on path loss (see col. 4, lines 10-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Lindroth and Kotzin to Harel et al and Mitsuru in order to improve signal quality.

Regarding claim 5, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel, Lindroth and Kotzin comprising all of the limitations as claimed in claim 4. They are silent to disclose determining transmit power requirements is further based on signal-to-noise-plus-interference ratio. However, Jalali et al disclose determining transmit power requirements is further based on signal-to-noise-plus-interference ratio is well known in the art (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Jalali to Lindroth, Kotzin and Harel et al and Mitsuru in order to determine signal quality.

Claim 7 lacks an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Hakkinen et al (US Patent Number 6226320).

Regarding claim 7, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel comprising all of the limitations as claimed. They are silent to disclose adjusting a power control setting for the subscriber at the base station. However, Hakkinen et al disclose adjusting a power control setting for the subscriber at the base station (see col. 1, lines 42-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Hakkinen et al to Harel et al and Mitsuru in order to improve signal quality.

Claims 8-10 and 13 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Hakkinen et al (US Patent Number 6226320) and still in view of Take (US Patent Number 6477158).

Regarding claim 8, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel and Hakkinen comprising all of the limitations as claimed in claim 7. They are silent to disclose assigning a spectral priority code to the subscriber based on whether the subscriber is near to or far from the base station, and wherein carrier allocation occurs based on the spectral priority code. However, Take discloses assigning a spectral priority code to the subscriber based on whether the subscriber is near to or far from the base station, and wherein carrier allocation occurs based on the spectral priority code (see col. 7, lines 30-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Take to Hakkinen et al, Harel et al and Mitsuru so that high power signals are assigned to subscribers far away from the base station.

Regarding claim 9, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel and Hakkinen and Take comprising all of the limitations as claimed in claim 9. They are silent to disclose allocating carriers at the center of the band to the subscriber when the subscriber is assigned a first predetermined spectral priority code. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide allocating carriers at the center of the band to the subscriber when the subscriber is assigned a first predetermined spectral priority code so that reserve high power signals are reserved for subscribers far away from the base station in order to improve the quality of signal.

Regarding claim 10, Mitsuru et al disclose a process for allocating carriers in a multicarrier system modified by Harel and Hakkinen and Take comprising all of the limitations as claimed in claim 9. They are silent to disclose allocating carriers adjacent to carriers at the center of the band to the subscriber when the subscriber is assigned a second predetermined spectral priority code that is of a lower priority than the first predetermined spectral priority code. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide allocating carriers adjacent to carriers at the center of the band to the subscriber when the subscriber is assigned a second predetermined spectral priority code that is of a lower priority than the first predetermined spectral priority code so that reserve high power signals are reserved for subscribers far away from the base station in order to improve the quality of signal.

Regarding claim 13, the apparatus of MITSURU et al in view of Harel et al does not disclose wherein the carrier allocator classifies subscribers into groups and allocates carriers to each of the subscribers based on the priority group in which each of the subscribers resides. However, Hakkinen et al disclose wherein the carrier allocator classifies subscribers into groups and allocates carriers to each of the subscribers based on the priority group in which each of the subscribers resides (see col. 7, lines 30-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the above teaching of Take to Hakkinen et al, Harel et al and Mitsuru so that high power signals are assigned to subscribers far away from the base station.

----- NEW CITATIONS -----